

CLERK'S OFFICE U.S. DIST. COURT  
AT DANVILLE, VA  
FILED *RF*  
JUL 27 2005  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

MARK J. DUNCAN,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

)  
) Civil Action No. 7:05-cv-00432  
)

) MEMORANDUM OPINION &  
) FINAL ORDER  
)

) By: Jackson L. Kiser  
) Senior United States District Judge

Petitioner, Mark J. Duncan, a federal inmate proceeding pro se, has submitted to the court what this court will construe as a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255. However, court records indicate that petitioner has previously filed a §2255 motion, Civil Action No. 7:99cv00134, regarding the same conviction and/or sentence. Thus, petitioner's current § 2255 motion is a second or subsequent one, falling under the provisions of Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996). Under these amendments, this court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255, ¶8. As petitioner has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive § 2255 motion, it is hereby

**ORDERED**

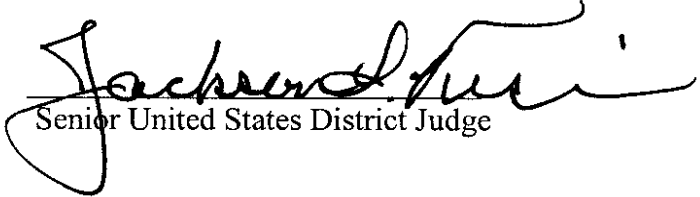
that the above referenced motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255, shall be and hereby is **DISMISSED** without prejudice as successive.

Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion.

Petitioner must submit a copy of successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion will be included with this notice or are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.

The Clerk is directed to send certified copies of this order to petitioner and to strike the case from the active docket of the court.

ENTER: This 27<sup>th</sup> day of July, 2005.

  
Senior United States District Judge